Supreme Court, U.S.
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No. 01-1061

In the
Supreme Court of the United States

PROGRAMMED LAND, INC., ET AL.,
Petitioners,

v.

PATRICK O'CONNOR, IN HIS CAPACITY AS TREASURER AND AUDITOR FOR HENNEPIN COUNTY, MINNESOTA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

HENNEPIN COUNTY RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Until 1998, each taxpayer who owned commercial or industrial property was entitled to receive a lower class rate on one property per county. Hennepin County identified and treated these properties as a separate class from other commercial or industrial properties. In Hennepin County, taxpayers received three notices which included, *inter alia*, the assessor's determination of class or treatment. Taxpayers receiving the lower class rate had the words "preferred" or "low-rate" after the word "commercial" or "industrial" on these notices. Taxpayers receiving the regular higher commercial rate only had the word "commercial" or "industrial" on the notices. Statutorily created civil actions called Tax Petitions had to be filed no later than March 31st of the year in which the taxes were payable. Applications for administrative review had to be made by December 31st, or nine months after the filing deadline for Tax Petitions. The first notice was sent to taxpayers approximately ten months prior to the filing deadline for Tax Petitions, the second notice was sent approximately four months prior to the filing deadline for Tax Petitions and the third notice was sent no less than thirteen days prior to the filing deadline for Tax Petitions. In this context the questions are:

1. Whether the Due Process Clause is violated by a property tax system in which the taxpayer received three separate notices containing descriptive words which unequivocally identified the class or treatment the property received prior to the running of the statute of limitations for filing a statutorily created civil lawsuit or for applying for an administrative review.

2. Whether the Equal Protection Clause is violated where errors in the classification or treatment of property by assessors were not intentional, arbitrary or systematic.

3. Whether an equal protection claim was subject to the same statute of limitations imposed on all other property tax claims.

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STATEMENT

This case raises due process and equal protection claims with regard to the statutory appeal procedures of the property tax system in the State of Minnesota. In 1997, the Minnesota State Legislature amended the classification statute so that there was only one class rate for commercial and industrial property, making this case moot for taxes after 1997. The Hennepin County petitioners filed this case in 1998 seeking recovery of allegedly overpaid real property taxes between 1987 and 1997. Hennepin County Respondents made administrative corrections for taxes payable in 1997 and granted administrative abatements for taxes payable in 1996. *See* Minn. Stat. §§ 273.01 and 375.192, subd. 2. However, Respondent refused to consider corrections for taxes payable in 1995 or prior years because those taxes were beyond the statutorily prescribed periods for filing claims. Petitioners' Brief app. at 5a. The Minnesota Supreme Court upheld Hennepin County's decision, concluding that the statutes of limitations had expired and the notices given did not violate the Due Process Clause. The Court also found no violation of the Equal Protection Clause because Petitioners had not shown that the treatment accorded taxpayers who received the lower class rate compared to those who did not, was the result of intentional or arbitrary or systematic discrimination.

1. The Commercial or Industrial Property Tax Classes. Each taxpayer who owned commercial or industrial property was entitled to receive a lower class rate on one property per county. *See* Minn. Stat. § 273.13, subd. 24 (1996). In Hennepin County, taxpayers receiving the lower class rate had the words "preferred" or "low-rate" after the word "commercial" or "industrial" on the notices they received. Taxpayers receiving the regular higher commercial rate only had the word "commercial" or "industrial" on the notices. Hennepin County treated property receiving the

lower class rate as a separate class from the regular commercial or industrial class. For purposes of this brief, Hennepin County will identify the commercial or industrial property receiving the lower class rate as "commercial low" class and will identify commercial or industrial property receiving the regular class rate as "commercial regular" class. In its decision, the Minnesota Supreme Court did not rule whether commercial low class was a separate classification from commercial regular class or whether it was a separate treatment. Depending on the particular year, the commercial low class actually had a "tiered" rate with the first $100,000 of value multiplied by 3.0% to 3.3% and the remainder of value multiplied by 4.6% to 5.25%. The commercial regular class had the higher "tiered" percentage of the commercial low class for the particular year as a single flat rate.

2. How Commercial or Industrial Property Tax was Computed.

a. The Assessment Process. The first step in computing property tax was for the assessor to determine the Estimated Market Value (EMV) and the class of the property for the assessment date in question. The assessment date was January 2nd of the year preceding the year in which the taxes were payable. In Hennepin County for the period in question, the assessor had to determine whether the property was entitled to commercial low class or the commercial regular class. Once that decision was made, the assessor multiplied the statutorily determined class rate by the EMV to arrive at the "Net Tax Capacity" of the property. For example, using the class rate identified in Petitioners' Brief app. at 3a for taxes payable in 1993, the first $100,000 of EMV would be multiplied by 3% and any value above that would be multiplied by 5.06%. For a property with an EMV of $200,000, the Net Tax Capacity for commercial low class would be $100,000 x .03 = $3,000 plus $100,000 x .0506 =

$5,060 or $8,060. For a $200,000 property the Net Tax Capacity for commercial regular class would be $200,000 x .0506 = $10,120. The Net Tax Capacity for each property was reported by the assessor to the auditor in June of the assessment year. *See* Minn. Stat. § 274.04. The Assessment process produced the property's EMV, Class, Class rate and Net Tax Capacity.

b. The Levy Process. The next step in computing the tax was for local taxing districts to certify their proposed budgets to the auditor. This was done by September of the assessment year. *See* Minn. Stat. § 275.065, subd. 1. Final budgets and the levy were certified by the local taxing districts to the auditor by December of the assessment year. *See* Minn. Stat. § 275.07. The auditor then divided the total levy by the sum of all Net Tax Capacities for all property in the taxing district to arrive at the Tax Capacity Rate or Extension Rate. *See* Minn. Stat. § 275.08, subd. 1b. As an example, in Petitioners' Brief app. at 10a, n. 8, the Minnesota Supreme Court used a final levy of $1,000,000 and a total of the Net Tax Capacities of $2,000,000 for an Extension Rate of .5. ($1,000,000 ÷ $2,000,000 = .5) The Levy Process produced the Tax Capacity Rate or Extension Rate. This explanation is simplified because it does not take into account state paid aids, fiscal disparities, market rate taxes and the fact that each parcel has multiple taxing districts.

c. The Collection Process. The last step in computing the property tax is for the Extension Rate to be multiplied by the property's Net Tax Capacity to arrive at the tax. In the case of the two commercial properties with an EMV of $200,000 where the Extension Rate is .5, the tax for the property which is entitled to the commercial low class treatment, would be $4,030. This was calculated by taking the Net Tax Capacity of the property and multiplying it by the Extension Rate. ($8,060 x .5 = $4,030) For the property which receives the commercial regular class treatment, the tax would be $5,060. This was calculated by taking the Net Tax

Capacity of the property and multiplying it by the Extension Rate. ($10,120 x .5 = $5,060) Tax Statements were mailed to taxpayers during this process and taxpayers paid the tax. The Collection Process produced the tax amount due for each property.

3. The Three Notices Received by Taxpayers. During the assessment, levy and collection process, taxpayers received three notices. These notices were required by statute to be issued at various times in the process to notify taxpayers of information that was previously available and which became available at the time of their issuance. It is undisputed that while none of the notices for any of the classes of property contained the numerical class rate of the property, all of the notices contained words describing the class or treatment which the property received. In the case of commercial or industrial property, if the assessor determined that the property was entitled to commercial low class, the words "low-rate" or "preferred" would appear on the notices after the words "commercial" or "industrial." If the assessor determined that the property received commercial regular class, only the words "commercial" or "industrial" would appear on the notices.

a. Value Notice. These notices were sent to taxpayers in approximately February of the assessment year which was the year before the taxes were payable. They were the first notices sent and included the EMV, classification or treatment and the dates of the local board of review, which was an administrative appeal process. *See* Minn. Stat. § 273.01. It is undisputed that Hennepin County did not include the numerical class rate on the notices but did identify, by descriptive words, which class or treatment was assigned.

b. Truth in Taxation Notice. These notices were sent to taxpayers between November 10th and 24th of the assessment year. They repeated the EMV and classification or treatment of the property. The notice also included the amount of tax proposed as a result of the proposed budgets

submitted, and a notification of meeting dates of local taxing districts where budgets would be discussed and finalized. *See* Minn. Stat. § 275.065. The same words were used to describe the classification or treatment of property as in the Value Notice.

c. Property Tax Statements. These notices were the last of the three notices that taxpayers received. It is undisputed that in Hennepin County, these notices were sent out before the deadline for filing Tax Petitions for the years in question. In an affidavit that is part of the record in the Minnesota Supreme Court, Marie Kunze, Manager of the Property Tax Division of the Hennepin County Taxpayer Services Department, indicated that Property Tax Statements for commercial or industrial properties were sent to taxpayers between seventy-three and thirteen days before the deadline for filing Tax Petitions. The notices repeated the EMV and classification or treatment of the property using the same words as the previous notices. To this was added the actual property tax amount and the dates on which the taxes were due. *See* Minn. Stat. § 276.04, subd. 3.

4. The Various Appeals Processes. The Minnesota property tax system provided numerous ways to challenge the class or treatment assigned by the assessor. After receiving the Value Notice in approximately February of the assessment year, taxpayers were free to seek adjustments directly from assessors. *See* Minn. Stat. § 273.061, subd. 9. Taxpayers were also free to seek adjustments from the local boards of review and the county board of equalization which met after the Value Notices were received. *See* Minn. Stat. § 274.01, subd. 1. After receiving the Truth in Taxation Notice in November of the assessment year and the Property Tax Statement in March of the payable year, taxpayers could challenge the class or treatment by filing a Tax Petition by March 31st of the payable year. *See* Minn. Stat. ch. 278. Taxpayers were also free to challenge the class or treatment by seeking an abatement from the county by filing an

application by December 31st of the payable year. *See* Minn. Stat. § 375.192. Additionally, the commissioner of revenue had the power of abatement of property taxes in certain circumstances. *See* Minn. Stat. § 270.07, subd. 1. The Minnesota property tax system has five separate ways to challenge the assessment of real property. All of these methods of challenging the assessment are after receiving notice of the EMV and classification or treatment of the property.

5. The Decisions Below. In the trial court, the Hennepin County Respondents moved for summary judgment on a number of grounds. The District Court denied the motion on all grounds. The only grounds relevant to this appeal relate to subject matter jurisdiction. In this context, the District Court ruled against Hennepin County Respondents on all issues but only gave as its rationale that Minn. Stat. § 276.19 provided an alternative statutory remedy for which the statute of limitations had not run. Petitioners' Brief app. D. In its decision, the Minnesota Court of Appeals disagreed with the rationale of the Hennepin County District Court, ruling that Minn. Stat. § 276.19 was not applicable but that equitable or common law remedies were available. The Court of Appeals also ruled that there was no violation of due process or equal protection. Petitioners' Brief app. B. The Minnesota Supreme Court agreed with the Court of Appeals that Minn. Stat. § 276.19 was not available and there was no violation of due process or equal protection, but it reversed the Court of Appeals on the availability of equitable or common law remedies. The Minnesota Supreme Court ruled that where statutorily created remedies were available, equitable and common law remedies could not be used to recover property tax overpayments. Petitioners' Brief app. A. The dissent disagreed on this issue and indicated that equitable and common law remedies should be able to be used to recover a property tax overpayment in this context. The dissent did not disagree with the majority that there was

no violation of due process or equal protection. The only issues challenged by Petitioners are due process and equal protection claims.

REASONS FOR DENYING THE PETITION

The Minnesota Supreme Court ruled that the error which caused some commercial or industrial properties to be overtaxed, occurred during the assessment process. That process is when the assessor determines the EMV, the classification or treatment and the Net Tax Capacity of the property. It is undisputed that in Hennepin County, if the assessor determined that the property was to receive commercial low class, the EMV of the property was multiplied by the correct two tiered low class rate to arrive at Net Tax Capacity. If the assessor determined that the property was to receive commercial regular class, the EMV of the property was multiplied by the correct single flat regular class rate. The error occurred in the assessor's decision with regard to which class or treatment was appropriate for the property. It is undisputed that once that decision was made, the correct class rate corresponding to the treatment decided upon, was used. Consequently, the error was not an "arithmetic", "mathematical" or clerical error, but an error in which treatment to use, followed by the application of the correct class rate corresponding to the erroneously determined class or treatment. The Minnesota Supreme Court described this error in an inartful manner as applying the "wrong class rates" to commercial or industrial property. Petitioners' Brief app. at 7a.

In describing the three notices received by taxpayers, the Minnesota Supreme Court stated they "did not contain information from which respondents could determine that the counties applied the wrong class rate." Petitioners' Brief app. at 7a. As previously pointed out, the error was not in applying the "wrong class rate" but in the assessor's decision

of which class or treatment the property was supposed to receive. That decision, in descriptive words, was included on all of the notices. It is undisputed that in Hennepin County, if the property received the commercial low class treatment, the notices contained the words "commercial" or "industrial" followed by the words "low-rate" or "preferred." If the property received the commercial regular class treatment, the notices contained only the words "commercial" or "industrial." While it is true that the numerical class rates were not included, descriptive words showing the assessor's determination of class or treatment were included on the notices.

Petitioners stated that "it is undisputed that taxpayers could not determine, from the information that was provided in the bills and notices, that erroneous rates had been used." Petitioners' Brief at I. This statement is not correct, and is misleading. The error was not in applying erroneous rates but in applying correct class rates after making an error in the decision of which class or treatment to use. It ***was*** possible from the words used on the bills and notices to know whether the assessor determined the property received the commercial low class or the commercial regular class.

Petitioners have not challenged the constitutionality of any Minnesota statutes. The due process and equal protection challenges are based on the administration of the tax law system. Petitioners' Brief at I. Petitioners have indicated that the Minnesota Supreme Court "concluded that the statute of limitations for challenging illegal taxes had expired *before many of the taxpayers had even received their tax bills.*" Petitioners' Brief at 2. This statement is not true. Because the constitutionality of statutes has not been questioned, it is important to look at the facts as they existed rather than a hypothetical situation which Petitioners have proposed. Hennepin County Respondents have shown through evidence in the record that during the period in question, Property Tax Statements for commercial or industrial property were mailed

to taxpayers between seventy-three and thirteen days before the deadline for filing tax petitions. *See supra* subsection 3c. Additionally, prior to 1995, the statute of limitations for filing Chapter 278 Petitions was May 15th rather than March 31st of the year the taxes were payable. *See* 1994 Minn. Laws, ch. 587, art. 5, §§ 14 and 32. With this information, the evidence shows that Hennepin County taxpayers ***always*** received their Property Tax Statements before the statute of limitations for challenging property taxes expired.

Petitioners have failed to mention to this Court that in 1997, the Minnesota Legislature abolished the two classes or treatments for commercial or industrial property. For taxes payable in 1998 and subsequent years, there was only one class or treatment and all property received a lower percentage on the first $150,000 of value with a higher percentage on the remainder as a class rate. *See* 1997 Minn. Laws, ch. 231, art. 1, §§ 7 and 22 and Minn. Stat. § 273.13, subd. 24 (a) (1) (2000). Therefore, the issues raised by this action are no longer applicable.

I. WHERE THE ERROR IN THE PROPERTY TAX SYSTEM IS THE ASSESSOR'S DETERMINATION OF CLASS OR TREATMENT, TAXPAYERS RECEIVED DUE PROCESS WHERE THEY RECEIVED THREE NOTICES CONTAINING DESCRIPTIVE WORDS WHICH UNEQUIVOCALLY IDENTIFIED THE CLASS OR TREATMENT OF THEIR PROPERTY PRIOR TO THE RUNNING OF THE STATUTE OF LIMITATIONS FOR JUDICIAL REVIEW OR ADMINISTRATIVE REVIEW.

It is undisputed that a post deprivation system of reviewing taxes complies with due process requirements when the state provides "meaningful backward-looking relief to rectify any unconstitutional deprivation." *McKesson Corp*

v. Division of Alcoholic Beverages & Tobacco 496 U.S. 18, 31 (1990). In order to meet due process requirements the state must also provide taxpayers with a "fair opportunity to challenge the accuracy and legal validity of their tax obligations." *McKesson*, 496 U.S. at 39. In order to provide this fair opportunity to challenge the tax, taxpayers must receive "notice reasonably calculated, under all the circumstance, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

This case boils down to whether the notices given were adequate to meet due process requirements. Hennepin County has shown that the error Petitioners complained about, was the class or treatment the assessor determined for Petitioners' properties. Hennepin County has shown that Petitioners received three notices specifically identifying with descriptive words, the class or treatment the assessor assigned to the property. All of the notices for the years in question were sent before the statute of limitations expired for the filing of Chapter 278 Petitions or submitting applications for abatements.

Petitioners seem to indicate that if Hennepin County would only have listed the numerical class rate on these notices, so that it could be compared to the relevant Minnesota Statute, the notice would have met due process standards. Petitioners' Brief at 15-16. Using these rates as an example, the notices would say "commercial 3.0/5.06" for the commercial low class and "commercial 5.06" for the commercial regular class. However, the actual class rates do not always appear in Minnesota statutes. Class rates for commercial property varied from year to year by legislative direction and were permitted to be determined by the governor for some years and the commissioner of revenue for other years. *See* 1989 Minn. Laws. 1st Sp. Sess., ch. 1, art. 2, §§ 5 and 8.

It is interesting to note that Petitioners have never listed the class rates for the years in question. The only place in which the class rates were listed was on pages 6 and 7 of Hennepin County's Memorandum in Support of the Motion for Summary Judgment in the trial court. Petitioners stated that the change in class rates over the years "had no bearing on the legal issues in the case." Petitioners' Brief at 2 n.1. Hennepin County agrees with that statement and believes that the actual numerical class rates are not important. The important factor in this case is not that the taxpayer received notice of the numerical class rate of the property, but that the taxpayer received notice in words which described which class or treatment taxpayer's property received, which he or she could then compare to the class or treatment the property should have received. This required the taxpayer to have some basic knowledge of the various property classes or treatments and how they were identified. However, this would also be true if Hennepin County identified the class or treatment on the notices by the numerical class rates.

In short, Petitioners are quibbling about what type of notice should be given and that the notice they propose is better notice than the notice given by Hennepin County Respondents. Petitioners stated that the "counties did not offer *any* information that would put reasonable taxpayers on notice that an incorrect class rate was being applied ..." Petitioners' Brief at 15. That is untrue. Hennepin County Respondents have shown, that with very little basic knowledge of the tax system, if a taxpayer looked at any one of the three notices received, it would have taken seconds to discover whether or not the property had the commercial low class treatment or regular class treatment. Hennepin County does not believe that the notice proposed by Petitioners is better than the notice given. However, due process does not require that the "best" notice be given, only reasonable notice.

II. THE ERRORS IN CLASSIFICATION OR TREATMENT OF PROPERTY WHICH WERE NOT INTENTIONAL OR ARBITRARY OR SYSTEMATIC DID NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

This Court has stated that "[i]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property... [citations omitted]." "The equal protection clause ... protects the individual from state action which selects him out for discriminating treatment ... [citations omitted]." *Allegheny Pittsburgh Coal Co. v. County Comm'n,* 488 U.S. 366, 345 (1989). The Minnesota Supreme Court has stated, "discrimination in the imposition of the tax burden, resulting from systematic, arbitrary or intentional undervaluation of some property as compared to the valuation of other property in the same class, violates the uniformity clause of ... [the Minnesota Constitution] and the equal protection clause of ... [the U.S. Constitution]." *United National Corporation v. County of Hennepin,* 299 N.W.2d 73, 75 (Minn. 1980). The Minnesota Supreme Court found that the evidence in the record showed that errors in the assessment were bureaucratic errors and that Petitioners failed to prove that they were intentional, arbitrary or systematic. As such, the errors did not violate the Equal Protection Clause. Petitioner cites *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) for the proposition that the action of government officials can be a violation of the equal protection where a person was treated differently than other similarly situated individuals and there was no rational basis for the difference in treatment. Petitioners' Brief at 23-24. In *Olech*, plaintiff alleged that the reason for the different treatment was because of "vindictive action" on the part of government officials. "Vindictive

action" is intentional by definition and therefore different from the actions in this case.

Petitioner cites *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) for the proposition that differential treatment because of "isolated ... bureaucratic oversight" is a violation of equal protection. Petitioners' Brief at 24. However, this Court found the violation to be due process not equal protection. It was only in a concurring opinion that Justice Blackman indicated that there was also a violation of equal protection under the circumstances. *Logan* has no application to instant case because it was decided on due process grounds and it was an example of where the violation occurred during the appeal process which is not the situation in the instant case.

III. THE EQUAL PROTECTION CLAIM IS SUBJECT TO THE SAME STATUTE OF LIMITATIONS IMPOSED ON OTHER PROPERTY TAX CLAIMS.

The equal protection claim relates to errors in the assessment by the assessor which the Minnesota Supreme Court found to be bureaucratic errors. As such, an equal protection claim was capable of being alleged and litigated during the Chapter 278 process. The Minnesota Supreme Court has seen a large number of equal protection claims in the context of appeals from the Tax Court or the District Court involving the Chapter 278 process. *See e.g. Westling v. County of Mille Lacs*, 581 N.W.2d 815 (Minn. 1998); *Rio Vista Non-profit Housing Corporation v. County of Ramsey*, 335 N.W.2d 242 (Minn. 1983); *Hegenes v. State*, 328 N.W.2d 719 (Minn. 1983); *Matter of McCannel*, 301 N.W.2d 910 (Minn. 1980); *United National Corporation v. County of Hennepin, supra* and *Hamm v. State*, 255 Minn. 64, 95 N.W.2d 649 (1959). The equal protection claims must be brought during the Chapter 278 process and are subject to the statute of limitations imposed by Chapter 278.

Petitioners claim that equal protection claims have a six year statute of limitations in Minnesota. They cite *Jacobson v. Board of Trustees*, 627 N.W.2d 106 (Minn. App. 2001) which involved allegations of breach of contract, promissory estoppel, unjust enrichment and impairment of contract. The court found that those claims all had a six year statute of limitations. The court also found that under the facts of the case, the equal protection claim was governed under the "residual" six year statute of limitations. Minn. Stat. § 541.05, subd. 1. (5). This statute of limitations is not applicable to property tax matters but only to injury to the rights of another "not arising on contract, and not hereinafter enumerated." Equal protection claims arising out of property tax assessments are governed by the Chapter 278 statute of limitations. Therefore, failure to file a timely Chapter 278 Petition precludes recovery under the Equal Protection Clause of the Constitution.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Dated: February 15, 2002

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